

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Madeleine Ayer	Team: Squad #13	CCRB Case #: 201906783	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 07/18/2019 1:03 PM	Location of Incident: 44th Precinct stationhouse	Precinct: 44	18 Mo. SOL 1/18/2021	EO SOL 9/4/2021	
Date/Time CV Reported Mon, 07/22/2019 2:05 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/01/2019 11:05 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Davon Alston	00136	938326	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Shavonne Hall	20461	963065	044 PCT
2. POM Ivan Angeles	06975	948619	044 PCT
3. POM Aaron Cataquet	23640	965972	044 PCT
4. POM William Garner	20756	951760	044 PCT
5. POF Guadalupe Almeida	12694	963366	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Davon Alston	Force: Sergeant Davon Alston used a taser against § 87(2)(b)	

Case Summary

On July 22, 2019, § 87(2)(b) called IAB and filed this complaint, which was received at the CCRB on August 1, 2019.

At approximately 1:03 p.m. on July 18, 2019, § 87(2)(b) entered the 44th Precinct stationhouse, located at 2 East 169th Street in the Bronx, to inquire about a police report. § 87(2)(b) was ordered to leave and complied, but then re-entered and was immediately Tased by Sergeant Davon Alston of the 44th Precinct (**Allegation A – Force: Nonlethal Restraining Device**, § 87(2)(g) § 87(2)(b) was transported to § 87(2)(b) to have the Taser prongs removed. Police Officer Aaron Cataquet and Police Officer Shavonne Hall, both of the 44th Precinct, witnessed parts of this incident. No arrest or summons resulted from this incident.

44th Precinct stationhouse surveillance footage was obtained by the investigation, but the obtained footage did not capture § 87(2)(b) interactions with Sgt. Alston. There is no other video evidence in this case.

Findings and Recommendations

Allegation (A) – Force: Sgt. Davon Alston used a Taser against § 87(2)(b)

§ 87(2)(b) testified that he was at the 44th Precinct stationhouse to inquire about the status of a criminal complaint report (**Board Review 01, Board Review 02**). He spoke to two unidentified officers, who were standing on the other side of a gate. He told them that he had been assaulted two weeks prior and that no report had been filed. § 87(2)(b) acknowledged speaking frankly and belligerently. He had consumed vodka prior to this and acknowledged being intoxicated during this incident. He denied that he raised his voice, made any hand movements, or put his hands inside his pockets. Sgt. Alston approached the gate silently. The first two officers ordered § 87(2)(b) to leave. § 87(2)(b) complied, leaving the stationhouse approximately two minutes after entering. When he got outside, he thought, “How dare they?” and, 15 seconds after exiting the stationhouse, he reentered. The two officers were gone, though Sgt. Alston remained. § 87(2)(b) now raised his voice and said, “Why aren’t you helping me? Why aren’t you guys taking this seriously?” Sgt. Alston, who was behind the gate, immediately Tased § 87(2)(b) from about seven feet away. § 87(2)(b) did not recall how many times Sgt. Alston Tased him or if Sgt. Alston said anything before Tasing him. The Taser prongs entered § 87(2)(b) skin around his chest and shoulders. He fell down on the back of his left shoulder and hit the back of his head on the stationhouse floor. § 87(2)(b) in a daze, was handcuffed and transported to Lincoln Hospital.

Sgt. Alston testified that he was at the stationhouse front desk when § 87(2)(b) entered and spoke to two officers who Sgt. Alston could not recall (**Board Review 03**). Sgt. Alston was not close enough to hear the specifics of their conversation, though he did hear an officer explain to § 87(2)(b) that his issue was a civil matter to be addressed in landlord-tenant court. § 87(2)(b) said to the officers, “Next time you see me, it’s going to be different, bitch.” Sgt. Alston believed § 87(2)(b) was intoxicated due to his slurred speech, and he considered this statement to be a threat. § 87(2)(b) walked out of the stationhouse and Sgt. Alston observed § 87(2)(b) outside, through the stationhouse security camera, pacing back and forth and peeking inside the stationhouse. § 87(2)(b) walked to the corner and then back towards the entrance of the stationhouse. Within a

minute of observing § 87(2)(b) through the security camera, Sgt. Alston took his Taser from his desk and walked outside with the Taser in his left hand.

§ 87(2)(b) was standing about 50 feet away. He appeared aggravated and was flailing his arms. He began walking towards Sgt. Alston. Sgt. Alston told § 87(2)(b) “Stop walking towards me,” but § 87(2)(b) continued to silently walk towards him. When § 87(2)(b) was about 25 feet away, Sgt. Alston again told § 87(2)(b) to stop walking towards him. Sgt. Alston could not recall if § 87(2)(b) said anything. § 87(2)(b) reached his right hand towards one of his pockets (Sgt. Alston could not recall which one). His hand did not enter his pocket. Sgt. Alston ordered him to not put his hand in his pocket. When he was about 15-20 feet away, § 87(2)(b) put his hand fully in his pocket for one or two seconds, at which point Sgt. Alston deployed his Taser for one standard cycle, lasting five seconds. Sgt. Alston believed § 87(2)(b) could have had a weapon solely because of his earlier threatening statement and the fact that he put his hand in his pocket. The Taser prongs entered § 87(2)(b) torso and he immediately fell down. § 87(2)(b) was handcuffed and transported to the hospital.

PO Cataquet’s § 87(2)(g) He could not hear the initial conversation § 87(2)(b) had with officers, but saw Sgt. Alston approach and order him to leave. § 87(2)(b) eventually walked out of the stationhouse, but returned several times. Each time § 87(2)(b) left the stationhouse, Sgt. Alston would walk behind § 87(2)(b) as he walked out, and when § 87(2)(b) came back in, he would follow right behind Sgt. Alston and say, “I’m not leaving. Fuck out of here.” PO Cataquet did not recall § 87(2)(b) saying, “Next time I come back, it’s going to be different.” At some point before § 87(2)(b) final exit, PO Cataquet walked out of the stationhouse and stood outside the front door. § 87(2)(b) exited the stationhouse and lingered around the police vehicles. Sgt. Alston followed him out and told him that he had to leave or he would be taken away in an ambulance. § 87(2)(b) pacing seven feet away from Sgt. Alston, replied, “Fuck that. I’m going to come back. I’m going to fuck you guys up.” PO Cataquet did not recall if § 87(2)(b) put his hands in his pockets at any point or if Sgt. Alston told him to take his hands out of his pockets. PO Cataquet did not recall what § 87(2)(b) was doing with his hands other than gesturing while he talked. Sgt. Alston, about seven feet away from § 87(2)(b) Tased § 87(2)(b) for one five-second cycle, and § 87(2)(b) immediately fell to the ground. He was handcuffed and transported to the hospital.

§ 87(2)(g) PO Hall testified that multiple officers she could not recall ordered § 87(2)(b) to leave the stationhouse and that she witnessed Sgt. Alston Taser § 87(2)(b) though she did not recall anything § 87(2)(b) said or did.

Medical records from § 87(2)(b) Hospital show that § 87(2)(b) was admitted on § 87(2)(b), at 2:21 p.m. and discharged the same day at 6:21 p.m. (**Board Review 06**). § 87(2)(b) complained of alcohol intoxication from drinking two pints of liquor the previous night, falling after being Tased, and having Taser wiring to his right chest wall and right lower quadrant. § 87(2)(b) was diagnosed with acute pain due to trauma, a healing bruise on his right anterior forehead, one Taser spear in his right anterior chest, and one Taser spear in the right lower quadrant of his

abdomen. § 87(2)(b) received CT scans of his brain and cervical spine, which were returned as negative. The Taser spears were removed.

The Taser X-26 data sheet for Sgt. Alston's Taser shows that his Taser was triggered once during this encounter for a five second duration (**Board Review 07**).

On August 9, 2020, a request for all footage from stationhouse surveillance cameras near the entrance to the 44th Precinct stationhouse was sent to the IAB-CCRB Liaison's Unit. The request was fulfilled on August 26, 2020. § 87(2)(b) was not observed on the received footage acting in the manner Sgt. Alston said he was. Following Sgt. Alston's CCRB interview, Sgt. Salvatore Desiano from the Liaison's Unit was contacted. He acknowledged that only footage from one of two cameras was provided to the CCRB pursuant to the original request. Stationhouse surveillance footage is deleted after 30 days and, by this time, it was approximately seven months after the incident occurred. Sgt. Desiano confirmed that any additional potential surveillance footage of this incident had since been deleted and was therefore unavailable to the investigation.

Conducted Electrical Weapons, including Tasers, should only be used against persons who are actively resisting, against persons exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons present (**Board Review 08**). Active resistance includes physically evasive movements and verbally signaling an intention to avoid or prevent being taken into custody. Active aggression includes a threat or overt act of an assault through physical or verbal means, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. NYPD Patrol Guide, Procedure 221-08.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 09**).
- Sgt. Alston has been a member of the service for 14 years and has been a subject of 16 allegations involving eight prior CCRB complaints, one of which were substantiated.
 - In CCRB case #200800389, the Board substantiated a retaliatory arrest allegation against Sgt. Alston and recommended Charges. Sgt. Alston was found guilty at the APU trial and he forfeited five vacation days.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) accepted mediation and this case was sent to ADR on September 4, 2019. However, it was deemed unsuitable and returned for an investigation on October 4, 2019.

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- As of April 22, 2010, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (**Board Review 10**).
- According to the Office of Court Administration (OCA), between 2002 and 2011, § 87(2)(b) pled § 87(2)(b) to disorderly conduct twice; trespass once; and public consumption of alcohol once (**Board Review 11**).

Squad No.: 13

Investigator:	<u>Madeleine Ayer</u> Signature	<u>Inv. Madeleine Ayer</u> Print Title & Name	<u>4/29/2020</u> Date
Squad Leader:	<u>Laura Kastner</u> Signature	<u>IM Laura Kastner</u> Print Title & Name	<u>04/30/2020</u> Date